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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,295	10/31/2003	Christian Saint Andre		5434

7590 09/21/2004

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EXAMINER

NGUYEN, TAM M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/698,295	Applicant(s) ANDRE, CHRISTIAN SAINT	
	Examiner Tam Nguyen	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the lines in the drawings are blurry. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

2. Claim 1 recites the limitation "the office chair" and "the seat support" in lines 3 and 6 respectively. There is insufficient antecedent basis for these limitations in the claim. The chair has merely been introduced as being usable with the exercise device, but the chair is not part of the invention. The claim can be easily corrected by substituting in --an office chair-- and --a seat support-- to avoid antecedent basis problems. The same error is present in the dependent claims. Claims 2-11 are also rejected for being dependent on a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (6,244,989).

3. As to claims 1-5, Chen discloses an exercise device capable of being used with an office chair, the device comprising a leg pedaling exercise mechanism (30), a rigid connection mechanism (10), a difficulty control mechanism (26), and a collar as substantially claimed (see Figs. 1-5).

Claims 1, 7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson (5,807,212).

4. As to claims 1, 7, 9 and 10, Nelson discloses an exercise device capable of being used with an office chair, the device comprising a leg exercise mechanism (102) and a rigid connection mechanism (104) having a collar (120) wherein the exercise mechanism includes foot members (16) that slide along a track/slot (28) and the exercise mechanism (102) is slidably connected to the rigid connection mechanism (108,118) as substantially claimed (see Figs. 1 & 3 and Col. 4, lines 25-48).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dranselka (4,262,902).

5. As to claim 1 and 6, Dranselka discloses an exercise device capable of being used with an office chair, the device comprising a leg exercise mechanism and a rigid connection mechanism as substantially claimed (see discussion of claim 1). Dranselka does not disclose that the exercise device includes a slip-resistant tread. The Examiner takes Official notice that the prior art includes exercise devices having slip-resistant treads. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add such a tread to Dranselka's device at the bottom of base plate 16 since the practice of adding such treads to exercise devices for increased stability is well known in the art.

Claims 1, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (5,807,212).

6. As to claim 1, 7 and 8, Nelson discloses an exercise device as described above (see discussion of claim 1 and 7). Nelson does not disclose that sliding track mechanism includes an adjustable resistance means/difficulty control mechanism. The Examiner takes Official notice that the prior art includes exercise devices having adjustable resistance means. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add an adjustable resistance means to Nelson's device since such a feature is well known in the exercise art and it would allow for a

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user to exercise at varying degrees of difficulty and/or allow users of various capabilities to be able to use the device.

Claims 1, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson (5,807,212).

7. As to claims 1, 7 and 11, Nelson discloses an exercise device capable of being used with an office chair as substantially claimed (see discussion of claims 1 and 7). Nelson does not disclose that the exercise device includes a slip-resistant tread. The Examiner takes Official notice that the prior art includes exercise devices having slip-resistant treads. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to add such a tread to Nelson's device at the bottom of anchor means 104 since the practice of adding such treads to exercise devices for increased stability is well known in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lubie '162, Argabright '538, and Hess '530 each disclose track exercise devices that may be usable with a chair.

Holslag '575, Rosenthal '033, Dranselka '984, Biran et al. '177, and Paprotnik are representative of the prior art that disclose cycling exercise devices that may be coupled to chairs.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 703-305-0784.

The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 17, 2004
